

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

Indianapolis, IN

SANITARY MANAGEMENT & ENGINEERING  
COMPANY, INC.  
Employer

and

Case 25-RC-10488

LABORERS' INTERNATIONAL UNION OF  
NORTH AMERICA  
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held January, 22, 2010, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.<sup>1</sup>

I. ISSUE

The Laborers' International Union of North America (hereafter the "Petitioner") seeks an election within a unit comprised of all full time and regular part time field employees/field

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<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

inspectors<sup>2</sup> employed by Sanitary Management & Engineering Company, Inc. (hereinafter the “Employer”). At issue in this case is whether a community of interest exists between the 24 field employees/field inspectors, hereinafter field employees, who perform a variety of sewer line locating, inspection, monitoring, and maintenance tasks for the Employer.

The Petitioner contends that the 24 field employees share a sufficient community of interest to constitute an appropriate unit for collective bargaining. The Employer contends that a community of interest does not exist between the employees performing field employee work because of varied skill levels and pay amongst the employees. The Employer contends that the six employees that it has referred to as helper/laborer employees constitute the only appropriate unit.

## II. DECISION

The evidence produced at the hearing reveals that the Employer’s field employees share a community of interest and are an appropriate unit for the purposes of collective bargaining.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time field employees/field inspectors employed by Sanitary Management & Engineering Company, Inc. at its Fishers, Indiana facilities; BUT EXCLUDING office clerical employees, professional employees, salesmen, guards and supervisors as defined in the Act.

The unit found appropriate herein consists of approximately 24 employees for whom no history of collective bargaining exists.

## III. STATEMENT OF FACTS

### A. Background Information

The Employer maintains corporate offices at 11905 Lakeside Drive and a shop facility at the intersection of 136<sup>th</sup> Street and Brook School Road in Fishers, Indiana. The Employer contracts with public utilities, municipalities, and private entities to perform sewer line locating, inspecting, monitoring, and maintenance services. These services include: locating existing

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<sup>2</sup> The Petitioner amended the petition at hearing to state that it was seeking to represent the Employer’s field employees instead of laborers because that is the term that the Employer uses to refer to the same 24 individuals that the Petitioner was referring to as laborers. The Employer uses the term field employees when referring to these employees and lists their position as field inspectors on their pay stubs. Therefore, the petitioned-for unit of employees is referred to as field employees/field inspectors.

utility lines, inspecting the proper construction of new sewer main lines and lateral lines installed by other contractors, monitoring sewer flow capacity, video inspection of sewer lines, inspecting and performing general maintenance on common force mains,<sup>3</sup> maintaining lift stations,<sup>4</sup> inspecting and rehabilitating manholes, relining sewer pipes, testing manholes and sewer lines with air pressure, vactoring,<sup>5</sup> cleaning sewers by use of high pressured water, and inspecting sewer line grease traps for restaurants and other entities. The Employer currently employs 24 field employees to complete these tasks.

## B. Description of Work Performed by Field Employees

The Employer does not maintain separate job descriptions for each type of work performed by its field employees. The following descriptions of field employees' work are based upon a document prepared by the Employer for hearing and testimony at the hearing by the Employer's Vice President James Hart and a field employee.

### 1. Utility Location

The Employer is contracted by other entities, such as public utilities, to locate existing sewer lines and mark the ground with paint symbols to indicate the positioning and depth of sewer lines. The Employer has trained certain employees to read existing sewer line maps/plans, observe structures such as clean out valves and manholes on the property, and use global satellite positioning equipment and other equipment to locate and to mark the sewer lines. Employees receive on-the-job training to perform these tasks. The Employer has five field employees trained to perform this work with only two predominately performing utility locating work at this time. Usually, only one employee is assigned to work at each location where such work needs to be performed.

### 2. Construction Inspection

Private companies and governmental entities contract with the Employer to inspect whether new construction sewer lines are properly installed. The field employee inspects the installation of the sewer lines to ensure that they comply with sewer line standards and the construction plans. The field employee enters data into the Employer's electronic data bases concerning the location and specifications of the sewer lines installed. Most of the governmental entities and some of the private companies require that such inspections be performed by an inspector that has been certified by the Indiana Department of Transportation ("DOT"). Two of the field employees have received the DOT certification. The record is unclear as to how long

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<sup>3</sup> A common force main is a lateral line that is designed to move sewage from more than one building/residence to the main sewer line. Because pumps and valves are used to move the sewage through these lines, routine maintenance is required.

<sup>4</sup> A lift station is a pumping station where sewage is lifted to a sufficient grade to flow through gravity forced sewage lines.

<sup>5</sup> Vactoring is a process by which a high pressure water jet and vacuum are used to drill a hole in order to locate utilities which cannot be located by other means.

the DOT training takes to complete, but it does require the passage of tests. Two or three other field employees are trained in performing this job by former job experience or on-the-job training. Usually, only one employee is assigned this task at the construction site.

### 3. Lateral Connection Inspection

The Employer is contracted by public utilities to inspect the installation and connection of new lateral lines<sup>6</sup> to the utilities' main sewer line. Similar to the construction inspections, the field employee inspects the connection of the lateral line to ensure that they comply with standards and the construction plans. The field employee then enters data concerning the location and specifications of the lateral line connection into the Employer's electronic data base. At least two of the Employer's field employees are trained to perform this work. Unlike the new construction inspections discussed above, apparently no special certification is required to perform this work. This is usually a job for only one employee.

### 4. Flow Monitoring

Public utilities contract with the Employer to monitor the flow of sewage through existing sewer lines. The work requires the placement of a flow monitoring device in the sewer line. Two field employees are required to perform this job. One acts as the helper and safety monitor as required by Occupational Safety and Health Administration ("OSHA"),<sup>7</sup> while the other enters the sewer line via a manhole, installs the monitoring device, and runs a cable to the mouth of the manhole. The device is left in place for a predetermined period of time. Periodically, one employee will stop by and collect data by hooking a computer to the cable that runs to the mouth of the man hole. One two-man team performs most of the flow monitoring tasks, but other field employees also perform this work. Field employees are trained in this task by on-the-job training.

### 5. Video Inspection

Public utilities contract with the Employer to perform video inspection of new construction and existing lateral sewer lines. The field employees use specially designed video equipment to inspect the lateral line from the building to the main sewer. Usually, this is a one-person job with four or five field employees performing this work on a regular basis. The Employer has about eight employees trained by on-the-job training to perform this work.

### 6. Common Force Main Maintenance

Public utilities contract with the Employer to maintain Common Force Mains ("CFM"). A CFM is when multiple buildings use a common lateral sewer line through which the sewage is

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<sup>6</sup> Lateral lines are the sewer lines from a building to the sewer main which usually run under the adjacent road.

<sup>7</sup> Any time an employee is required to enter a manhole, sewer or other below ground confined space, a second employee must stay above ground to monitor air quality and determine if evacuation of the confined space is required.

forced by pumps to the main sewer line. These types of lateral lines are often used when the lateral line exiting a building is too far below grade to rely upon gravity to move the sewage to the main sewer line. Because CFMs use pumps and valves to control the flow of the sewage, regular maintenance is required to keep them operational. Maintenance varies from the greasing of pumps, releasing of air pressure in a valve, to the rebuilding of the valve. Because the maintenance of the valves requires entrance into a main hole, a two-man crew is necessary to comply with OSHA standards. The Employer provides on-the-job training to perform this task and has at least five field employees trained to perform the general maintenance and at least three field employees trained to do more thorough maintenance such as rebuilding a valve.

#### 7. Lift Station Maintenance

Public utilities contract with the Employer to inspect and maintain lift stations. A lift station is employed when sewage must be lifted from lower grade sewage lines in order for the sewage to flow through gravity forced lines. The lift stations use electric pumps and valves to lift the sewage. These lift stations are also equipped with warning devices to alert for malfunctions. The employer maintains 25 lift stations which must be monitored/maintained at least weekly. Two of the field employees almost exclusively perform this work. Two other field employees are trained to perform this work. Due to the nature of the work, a two-man crew is required to comply with OSHA standards. Although the lift station maintenance requires more mechanical skills than most of the other jobs performed by the field employees, the employees learn to perform this work by past experience or on-the-job training.

#### 8. Manhole Inspection

Public utilities contract with the Employer to inspect the integrity of their manholes. The field employees perform a brief visual inspection for leaks, dirt, structural damage, etc. The Employer performs 1,500 to 2,000 manhole inspections per month. Approximately 18 of the 24 field employees are trained by on-the-job experience to perform manhole inspections. Manhole inspections are used as filler work for many of the field employees when other work is unavailable or precluded by weather conditions. This is a one-person job that even employees classified as helpers perform independently.

#### 9. AP/M Manhole Rehabilitation

Public utilities contract with the Employer to rehabilitate damaged manholes. The Employer has a license agreement to use a third parties' proprietary manhole rehabilitation process and products, which is referred to as AP/M manhole rehabilitation. The manhole rehabilitation involves the use of pressurized mixing and application equipment for various types of chemical liners. One of the field employees has received a one-week training and certification by the third party on this process. That field employee performs most of the technical work of manhole rehabilitation and is assisted by one other field employee, which varies from one job assignment to another. The record is unclear as to whether the one certified employee can provide other field employees with sufficient training to perform the job independently or whether they would also have to receive the one-week certification training by the licensing agreement. The AP/M equipment is maintained in a trailer, and it is necessary to have a

commercial driver's license ("CDL") to pull the trailer behind the Employer's work trucks. Four of the field employees maintain CDL licenses.

#### 10. Relining of Existing Sewer Pipe

Public utilities contract with the Employer to reline existing sewer pipes. The Employer is licensed to use a third party's proprietary equipment and process to reline existing pipes. This process requires the draining and cleaning of the existing pipe and the use of the proprietary equipment to install an expandable bladder that coats the length of the pipe with fiberglass impregnated with resins that are cured by ultraviolet light. Once dried, the liner forms a pipe that can function even if the original pipe disintegrates. The Employer has two field employees that are trained by the third party manufacturer to operate the re-liner equipment. Installation of the liner takes about four to six employees to set up and monitor all the necessary equipment. Employees who assist with this process are trained by the other employees.

#### 11. Sewer Testing

Public utilities contract with the Employer to test the integrity of sewer lines through the use of air pressure, mandrel, and vacuum tests. A mandrel is a device that is pulled through the sewer line to determine if at least 95% of the sewer pipe is passable. This is a two to four employee job. One field employee is usually assigned to perform this task with various helpers. Employees are trained on the job to perform this work.

#### 12. Vactoring

The Employer is contracted to find sewer lines which cannot be located through the usual means. The field employees make an educated guess based upon construction plans, layout of the buildings and manholes, etc. to determine where a sewer line is likely located. Then the employees use vactoring equipment to dig approximately six inch vertical holes until the sewer line is physically located. Vactoring is the process of using a high powered water spray to drill a vertical hole. The water and debris from the hole is vacuumed into a tanker truck. Once the elusive sewer line is located, a field employee who is trained in utility location is called in to mark where the sewer line runs through the property. The vactoring holes are backfilled with sand by the field employees. The record is unclear as to how many employees have been trained by the Employer to perform vactoring work. The work requires two or three employees and the composition of the teams performing this work varies due to work loads.

#### 13. Sewer Cleaning

Public utilities contract with the Employer to clean sewers by use of high pressured water to flush the sewage through the gravity forced lines. Prior to performing this work, residents must be informed by fliers, and clean out caps must be removed to prevent pressure from backing the sewage up into the residences. After the cleaning has been accomplished, the clean out caps must be replaced. Two field employees spend about 60% of their time performing this work with various helpers. Any of the field employees, even those trained in more skilled tasks,

are occasionally assigned to work as helpers to distribute flyers and remove or replace the clean out caps.

14. Manhole Repairs

Public utilities contract with the Employer to make minor repair to manholes that do not require the relining described above. These repairs include replacing damaged manhole lids, chemical grouting, and replacing the core or barrel of the manhole. Field employees performing manhole repairs always work in two-man teams because of OSHA requirements. The record is unclear as to how many employees are trained to perform this work, but establishes that the replacement of manhole covers takes little training.

15. Investigations

Utilities contract with the Employer to investigate complaints of sewer malfunction. The field employee goes to the location of the complaint and uses a variety of means discussed above to investigate the complaint including visual inspection, probes, video inspection, and sewer testing. The record is unclear as to how many employees are trained to or actually perform this work.

16. Grease Trap Inspections

Sewer lines running from some businesses, such as restaurants, are required by their local utility company to have a grease trap to prevent grease from entering and clogging the sewer system. The Employer is contracted by the utility to inspect specific grease traps on a regular basis. The grease traps are usually inspected by use of video and digital cameras and probes. The condition of the grease trap is recorded and reported to the utility, which contracts with other entities for maintenance or clean out of the grease traps. At least three of the field employees have received on-the-job training and are occasionally assigned to this task which requires about 2000 man hours per year to perform.

17. Other Types of Work

Although not specifically listed in the Employer's exhibit describing the types of work performed by the field employees, the field employees' work logs list additional types of work. Most of the employees' work logs contain time spent performing equipment maintenance and office site/yard work. Also, some of the field employees install new construction residential lateral lines and connect them to the sewer line mains. Vice President James Hart testified that the Employer performs some of this kind of work.

C. Field Employees' Terms and Conditions of Work

Field employees perform one or more of the jobs discussed above in a given day. The Employer specifically cross trains its field employees in three or four of these jobs to accommodate its varied flow of work. For example, at least 18 of the 24 field employees

perform manhole inspections as filler work. The field employees' time records/work logs for the three months preceding the hearing show that none of the field employees perform exclusively one job.

All field employees work from 8:00 A.M. until 4:30 P.M. with a half an hour unpaid lunch. The field employees regularly report to the shop at 8:00 A.M. to receive their work assignments for the day from Edward Pierpont and Amber Boulianne,<sup>8</sup> who report to James Hart, the Employer's Vice President. Even the few employees, who perform one type of job for the majority of the time report to the shop for their assignments. Such reporting is necessary since the employee assigned to work with them on any given day varies based upon other available work.

Regardless of which type job a field employee is assigned, the field employee enters information about the work completed into an electronic data base maintained by the Employer for all of its operations. All the field employees are trained on how to enter data and produce the necessary electronic reports for the work performed. Also, the field employees maintain daily electronic work logs. These daily work logs are the basis for the employees' pay and the Employer's billing.

All field employees are issued company shirts, sweatshirts, hats, and hardhats. The record implies, but is unclear, as to whether field employees are required to wear these items. If employees are assigned certain tasks, they are issued safety gloves and safety glasses. All field employees are granted the same vacation, holiday, and health care benefits.

Field employees' hourly wage rates range from \$13.00 to \$18.18 per hour. Wages are not based upon seniority, but upon skills and the average rate of pay in the surrounding market at the time the employee was hired. A field employee receives his hourly wage rate regardless of which job he is assigned to perform.

#### D. Team Leaders and Helpers

The Employer considers eight of the field employees as team leaders and six of the field employees as helpers. The Employer has not indicated any specific status for the other ten field

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<sup>8</sup> Edward Pierpont and Amber Boulianne work at the shop where the field employees report on a daily basis. Neither party seeks to include Pierpont and Boulianne in the appropriate bargaining unit. There is no evidence that either Edward Pierpont or Amber Boulianne actually perform any field employee work. The record contains specific examples of Pierpont assigning work, issuing discipline and effectively recommending hire. Although there was general testimony that Boulianne also assigns work, issues disciplines, and effectively recommends hire, there are no specific examples of her doing so in the record. Therefore, Pierpont is excluded from the unit because he does not perform unit work and due to his 2(11) supervisory status. Furthermore, Boulianne is excluded from the unit, without a finding on her supervisory status, because she does not perform unit work.



employees. Team leaders, helpers and the other ten field employees all have the same terms and conditions of employment as discussed above.

The following discussion addresses distinctions between these groups raised by the Employer. Team leaders are considered more knowledgeable in performing a particular job than other field employees. Team leaders are more likely to be assigned to one particular type of job than other employees, but none of them perform exclusively one job. For example, one team leader spends 30% to 40% of his time performing flow monitoring work. He is also the team leader for common force main maintenance work of which he spends about 40% of his time performing. The remaining 20% to 30% of his time involves various other jobs. Although employees commonly use mechanical and technological devices to perform work, the physical work of placing and operating these devices in manholes and sewer lines is usually performed by the team leaders or other more highly trained employees.

Team leaders assist management in keeping track of work that has been completed and how much work remains to be completed on individual contracts. The team leaders meet with supervision once per week to discuss these production status issues. Team leaders' hourly wages range between \$15.12 and \$18.18 per hour, while the other employees' wages range between \$13.00 and \$17.50 per hour. Some team leaders have been selected to receive more specific training such as the Department of Transportation certification for construction inspections and manufacturers' application processes. However, other team leaders have received only on-the-job training. Two of the team leaders are required to have CDLs, because they often drive company vehicles and equipment that require such licensing. Two other employees, who are not team leaders, are also required to have CDLs for the same reason. There is no evidence that any of the field employees were required to have, or have, any other formal education or training. Most of the necessary skills are acquired through on-the-job training, and there is no evidence that such training requires a significantly long time to acquire.

The Employer categorizes six employees as helpers. Helpers have received less on-the-job training and are often assigned to assist team leaders or one of the other ten better trained employees, especially when the work requires a two-person team per OSHA requirements. Employees receive on-the-job training by working with other employees in this fashion. When working with another employee, helpers assist with moving, setting up, and monitoring the equipment used by the lead employee. The helpers, as identified by the Employer, make between \$13.00 and \$16.50 per hour, while other field employees make between \$14.00 per hour and \$18.18 per hour. In addition to working as a team with other employees, the helpers' work logs reflect that they do perform independent work such as manhole and grease trap inspections.

In some instances, helpers have been sufficiently trained in a particular job and thereafter are assigned the task of performing that job. Vice President Hart testified that this has occurred on more than one occasion. Hart testified at hearing that one individual that the Employer considers a helper has received training in locating utilities and will be assigned to perform that job in the near future.

#### IV. DISCUSSION

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act." NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting and it need not choose the most appropriate unit. See American Hospital Assn. v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988).

The Employer contends that the petitioned-for unit should only appropriately include the six field employees that it considers helper/laborer employees because their work more closely constitutes laborer work and because they do not share a community of interest with the other field employees. The Petitioner contends that all of the field employees share a community of interest, and therefore, constitute an appropriate unit for collective bargaining. The Employer gives too much weight to the Petitioner's use of the term laborer in the Unit description on the original petition. For clarification at hearing, the Petitioner amended the petition by replacing the term "laborer" with the term, "field employees," which is the term used by the Employer for the employees in the unit sought by the Petitioner. Therefore, the Employer's contention that only the "helper" employees who perform more laborer type work are the only appropriate employees to be covered by the petition is misplaced. The Employer also contends that only the field employees that it considers helpers/laborers would constitute an appropriate unit because they lack a community of interest with the other field employees. Thus, the issue in this case is whether the Employer's 24 field employees, whether labeled as team leaders, helpers, or otherwise by the Employer, have a sufficient community of interest to form an appropriate unit for the purposes of collective bargaining.

The record supports a finding that all of the field employees share a sufficient community of interest to constitute an appropriate unit. In making a determination regarding employees' community of interest, the Board weighs a variety of factors, including similarities in wages or method of compensation; similar hours of work; similar employment benefits; similar supervision; similarities in job functions; the integration of work functions; the degree of interchange between employees as well as the degree of employee contact; the degree of similar or dissimilar qualifications, training, and skills; and the history of bargaining. Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962); Banknote Corp. of America v. NLRB, 84 F.3d 637, 647-648 (2d Cir. 1996).

Field employees, regardless of their designation by the Employer as a team leader or helper employee, share in common most of the community of interest factors considered by the Board. Field employees are paid hourly wages between \$13.00 and \$18.18 with no clear demarcation of wage differences amongst the employees identified by the Employer as team leaders, helpers, or the other remaining 10 field employees. For example, the highest paid helper makes \$16.50 per hour, while the lowest paid team leader makes \$15.12. All the field employees report to the same facility on almost a daily basis and spend most of their working time away

from the facility. All the field employees have common supervision, receive the same benefits, and work the same hours.<sup>9</sup>

The jobs performed by the field employees require similar job functions and are often integrated. The field jobs involve locating, inspecting, monitoring, and rehabilitating sewer lines. All of the field employees are required to have some knowledge of sewer line layout and construction, and how to work in and around sewer lines. Often the specific job functions are integrated. For example, if existing sewer lines cannot be located by traditional locating means, a crew will be assigned to use vactoring to locate the sewer line. Once detected a person trained in locating sewer lines would be called in to finish marking the lines. Some type of physical labor is involved in virtually all of the jobs whether it is the simple removal of manhole covers, entering into confined spaces, or placing or operating equipment in the sewer lines. Despite the type of work being performed, all of the employees record information about the sewer lines that they are servicing in the Employer's data bases for future reference.

There is also a high degree of interchange of field employees amongst the field jobs. This is clearly demonstrated by the field employees' electronically maintained work logs. Because the amount of work available for each job varies, the Employer specifically cross trains its field employees to perform multiple field jobs. Even field employees that the Employer contends have special training and are team leaders do not exclusively perform one type of work. The same is true for helpers, who regularly assist other field employees in various types of jobs, and are also assigned to independently perform some jobs such as manhole and grease trap inspections. Furthermore, for work that requires two or more employees, the crew compositions are regularly changed to accommodate work loads.

Although the majority of the construction inspection work requires the field employees performing the inspection to be DOT certified, employees without the construction inspection certification perform that same work on jobs that do not require such certification. Also, untrained employees assist the trained employees in completing the licensed manufacturer applications. Such limited variation in training levels is simply insufficient to negate the other factors in which the employees share commonalities.

The limited variation in skills and training amongst the field employees is insufficient to prevent all the field employees from sharing a community of interest. Even though some of the field employees have received limited special training, in utilizing that training they work side-by-side with other field employees including the less skilled helpers. For example, one or two field employees have received the manufacturers' training in the reline process, but as many as two to five employees, who have not received the training course, assist the trained employees in performing that task. Although the majority of the construction inspection work requires the field employee performing the inspection to be DOT certified, employees without the construction inspection certification perform that same work on jobs that do not require such certification. Also, untrained employees assist the trained employees in completing the licensed

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<sup>9</sup> Approximately three employees perform emergency on-call work on an infrequent basis, but such additional work is insufficient to preclude them from having a community of interest with the other field employees.

manufacturer applications. Such limited variation in training levels is simply insufficient to negate the other factors in which the employees share commonalities.

The fact that two or more groups of employees have some different interests does not render a combined unit inappropriate if there is a sufficient community of interest among all of the employees. Berea Publishing Co., 140 NLRB 516, 518 (1963). See also Brand Precision Services, 313 NLRB 657 (1994). In Brand Precision Services, the employer performed industrial cleaning of drain pipes at its customers' business locations. The employer categorized its field employees as operators, lead men, mechanics, laborers, and warehousemen. Similar to this case, there was some variation in skills, which were mostly acquired through on-the-job training, and some delineation as to the type of work each group of employees performed. The Board found these variances insufficient to segregate a group of employees that shared many other community of interest factors into a separate unit for collective bargaining purposes. Id.

To support its contention that the helper employees should not appropriately be included in a unit with the other field employees, the Employer cites AG Communications Systems Corporation and Lucent Technologies, 350 NLRB 168, 178 (2007). In AG Communications, the Board held that in accreting two previously separate groups with separate collective bargaining histories, the groups must have an "overwhelming shared community of interest" before they would appropriately constitute one bargaining unit. The AG Communications case is inapposite to the case at hand, because the field employees have no prior history of collective bargaining.

The Employer further cites cases where the board found that groups of employees were appropriately in separate bargaining units because of variations in tasks and skills. One example of the cases cited by the Employer for its proposition that the variation in skills amongst the field employees prevents them from having a community of interest is WKRG-TV, Inc., 190 NLRB 174 (1971), *enfd* 470 F.2d 1302, 1311 (5<sup>th</sup> Cir.1973). In WKRG-TV the Board held that custodial employees and production employees at a television station did not constitute an appropriate unit for collective bargaining purposes because of the inherent differences in their job requirements. Clearly, the field employees' job requirements and skills are more closely aligned than custodial and production employees at a television station. Each of the cases cited by the Employer as examples of why the field employees' variations in job tasks and skills prevent them from having a community of interest is similarly distinguishable from the case at hand.

Because all of the field employees share so many interests in common, including common duties, integration of work, interchange of work, similar pay ranges, and common supervision, benefits, and hours of work, I find that they share a sufficient community of interest to constitute an appropriate unit for the purposes of collective bargaining.

## V. CONCLUSION

Based upon the evidence described above, it is concluded that there exists a sufficient community of interest amongst the petitioned for unit of the Employer's field employees to constitute an appropriate unit for collective bargaining.

## VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Sheet Metal Workers' International Association Local Union No. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election. To be timely filed, the list must be received in the Regional Office **on or before March 3, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor

will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>10</sup> by mail, or by facsimile transmission at 317-226-5103. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

*Procedures for Filing a Request for Review:* Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **March 10, 2010**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website **is accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a

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<sup>10</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

longer period within which to file.<sup>11</sup> A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, select the E-Gov tab, click on E-Filing, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

SIGNED at Indianapolis, Indiana, this 24<sup>th</sup> day of February 2010.

/s/ Rik Lineback

Rik Lineback  
Regional Director  
National Labor Relations Board  
Region Twenty-five  
Room 238, Minton-Capehart Building  
575 North Pennsylvania Street  
Indianapolis, Indiana 46204-1577

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<sup>11</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.